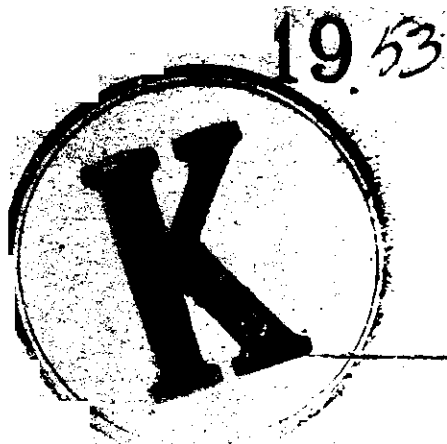


0/5 P.C./53



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File No. 59/53

Legal Deptt

G BRANCH

Subject:—

Opinion on the Indian
Penal Code

0/5 P.C./53

File No.

59/53

Gen. 194

59/53

C O N T E N T S.

Legal Department File No, O. I.P.C./53(O-53).

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Ans
24/8

In a prosecution under section 182 of the Indian Penal Code it is not for the accused to prove that the allegations made by him are true, but it is for the prosecution to prove that the allegations are false and the accused knew or believed them to be false.

The only material allegation of Shri K. J. Chandgude, in his petition dated the 27th June 1952, which is alleged to be false is the allegation that the pseudonymous application dated the 30th May 1952 purporting to be in his name may have been inspired by the Supply Agent Karan Shri Lambature. Reading his petition as a whole, as it should be read, what he states regarding Shri Lambature having inspired the application is his suspicion and after stating the grounds of that suspicion viz. the circumstances relating to the election of the President of Karmale Municipality and the fact that Shri Lambature did not make any enquiry from him when the pseudonymous application came to him for enquiry, he suggests that the Government may have the matter examined by a handwriting expert with a view to determine who in fact made the pseudonymous application and why. Reading the petition as a whole, therefore, it cannot be said that Shri Chandgude gave any information, which he knew or believed to be false, intending thereby to cause or knowing orx to be likely that he will thereby cause the Minister to use his lawful power to the injury or annoyance of Shri Lambature. A prosecution of Shri Chandgude under section 182 of the Indian Penal Code is therefore not likely to succeed.

Sd/P.H.IAD.
6/3

Remembrancer of Legal Affairs.

U.R. to C.S.D. No. G-150, dated the 7th March 1953.

The complaint will have to be filed by the public servant to whom the false information was given or his superior. In this case, according to the Civil Supplies Department, the false information was given to the Special Officer who is the licensing officer. If so, the complaint shall be filed by him or by his superior.

The complaint should be got drafted in consultation with the Chief Police Prosecutor, Bombay.

Sd/J.R. DEVRANDEAR,
15/5

Remembrancer of Legal Affairs.

U.R. to C.S.D. No. C-236, dated the 15th May 1953.

VGP. 16-2-56.

Submitted.

2. Please see the office notes of the C.S.D. on pages 1-4 ante.

3. The facts of this case, in short, are as follows:-

On 12-11-52, the Senior Accounts Supervisor in charge of the Satara Central Godown reported to the District Magistrate, Satara North that 3000 empty gunny bags which had been sent to the Central Godown from the Khatau Godown on 26-10-1951 in motors truck No. BYL 6807 belonging to Gandhi Bhandari Group of Wai had not been accounted for, in the accounts of the Central Godown. No regular receipt passed by Shri Shinde, the then godown Manager of the Central Godown for having received the 3000 bags was found in the records. However, a kutchha receipt signed by Shri Shinde was available with the truck owner. The kutch receipt said "we have received the contents brought by you." Further check of the accounts of the Central Godown showed that during the period from 5-11-51 to 30-11-52 (when Shri Shinde was the godown Manager) 3006 empty gunny bags were in excess. However the excess could not be attributed to the non-accountal of 3000 bags received from the Khatau godown as the Major portion of the bags in excess (viz 1600 bags) was found to be unserviceable while major portion of the unaccounted for bags. (viz 2250 bags); was serviceable. The District Magistrate sought the opinion of the District Government Pleader, Satara on the point whether a successful prosecution could lie against Shri Shinde and the truck owner for misappropriation of 3000 empty bags. The D.S.P. opined on 17-2-53 that Shri Shinde the truck owner and the truck driver were responsible for the loss of the bags and that they could successfully be prosecuted under section

409 and 408 read with sections 34 and 107 of the I.P.C. The C.S.D. asked the D.M. to get the gunny bags account for the years from 1949 to 1952 of the Central Godown as well as the actual stock of gunny bags, verified and then fix responsibility for all the shortages including the shortage of 3000 bags received from Khatau Godown. The verification of the accounted and the stock of the gunny bags showed the following shortages and excesses:-

	<u>Unaccounted</u>	<u>Excesses.</u>
1949-50	3,225	1,445
1950-51	10,400	7,499
1951-52	3,000	3,006
	<u>16,625</u>	<u>11,950</u>
Shortage in actual stock	233	
	<u>16,859</u>	<u>Net deficit 4,908</u>

The accounts of the Central Godown further showed that the gunnies had not been properly classified as per the instructions of the F.C., Bombay that the excess gunnies could not be attributed to any particular non-accountal for want of specific record; that it could not be said if the excess of 3006 bags in 1951 was due to non-accountal of 3000 bags in that year; and that the stock registers were not maintained properly. In view of above facts, the D.G.P. was again consulted whether a prosecution was possible against Shri Shinde and others. After considering all the circumstances, the D.G.P. opined as follows :-

"The conduct of Shri Shinde was most suspicious and there was very, likelihood of his having misappropriated the gunnies. However, from the State of accounts of gunnies in the stock register a doubt may arise in the mind of every Magistrate whether Shri Shinde misappropriated the bags or not. There is therefore possibility of the prosecution against him not succeeding. However a departmental action may be taken against him and he may be

dismissed from Government service."

The D.M., has already recovered Rs. 3,000/- from Shri Shinde and Rs. 2,000/- from the truck owner, Shri Khemchand as the cost of the gunny bags. The C.S.D. has been requested by the D.M. to pass orders whether a prosecution should be launched against Shri Shinde or whether a departmental action should be taken against him. The C.S.D. requests R.L.A. to opine whether a prosecution against Shri Shinde is possible in this case.

The view taken by the District Government Pleader is correct.

The Collector has recovered Rs. 3,000/- from Shri Shinde and if he is acquitted he will surely claim a refund of that amount. In the circumstances the best course would be to hold a departmental enquiry as proposed by the Collector.

Sd/

Additional Secretary to Government.

U.R. to C.S.D. NO. G- 400, dated the 9th July 1953.

VGP. 16-8-56.

From the papers it is evident that Shri S.S. Bobade is the main culprit in this case. The cheque for purchasing ten bags of sugar on the Laxmi Bank was given by the Secretary of the Society to Shri Dashrath Baba Bobade who handed over the cash to Shri S.S. Bobade. The amount was credited in the sub-Treasury by Shri S.S. Bobade and he received ten bags of sugar against the permit as is evident from his signature thereon. The cartman have also deposed that it was Shri S.S. Bobade who got the carts loaded and who took them to the house of Shri Namchand Gadkari where the carts were unloaded. They have stated that Shri Dashrath was then not with them. The Secretary has also stated that the Society had sent a resolution to the Assistant Registrar of Co-operative Societies to the effect that Shri S.S. Bobade is unworthy of confidence and should be removed from the Society. Although from all these statements Shri S.S. Bobade appears to be the main culprit, it would be advisable to prosecute Shri Dashrath Bobade as a co-accused as Shri Dashrath was with Shri Bobade at the time of the purchase of sugar and Shri S.S. Bobade's contention is that he entrusted the bags to Shri Dashrath and went to Poona. The Chairman, the Secretary and other Panchas if any may not be prosecuted in view of the paucity of the evidence against them; besides their evidence may be useful to the prosecution.

In addition to the charge of cheating it would be advisable to add a charge of criminal breach of trust under section 406 Indian Penal Code. In this case Shri S.S. Bobade and Shri Dashrath Bobade as members of the Society were entrusted with property which they dishonestly disposed of in violation of the implied undertaking given by the Society that they would distribute the property to the consumers against cards in quantities prescribed by the District Magistrate.

Sd/
Secretary to Government.

U.R. to C.S.D. NO. G-468, dated the 5th August 1953.

The question for R. L. A's consideration is whether the Collector's proposal in paragraph 9 of his letter dated the 9th May 1953 to launch prosecution should be approved.

It appears from the letter dated the 16th April 1953 of the Assistant Registrar of Co-operative Societies, Himatnagar to the Collector of Sabarmantha that the Secretary of the Shamalji Kendra Co-operative H.P. Society Ltd, who prepared the bills was ignorant of the Rules. The Assistant Registrar has suggested that if in spite of this, prosecution is proposed to be launched, legal action may be taken against the persons responsible.

As the Society was in possession of the original vouchers and duplicate vouchers were prepared at different rates viz. the sanctioned rates, the above contention regarding ignorance of the Rules or instructions can hardly stand especially in view of the fact that where the actual transport charges were more the society has claimed at the actual rates.

The Secretary appears to have prepared the duplicate vouchers with full knowledge of the rules and is therefore liable under section 468 Indian Penal Code for committing forgery with intent to cheat. He and the Chairman are also liable under section 420 read with section 511 Indian Penal Code for attempt to cheat Government and under section 471 Indian Penal Code for using the forged duplicate vouchers as genuine.

Sd/

Additional Secretary to Government.

U.R. to C.S.D. NO. G-602, dated the 30th September 1953.

VGP. 16-8-56.

In this case the District Superintendent of Police, Ratnagiri in his letter dated the 1st July 1953 has proposed that a prosecution for misappropriation of 10 bags of rice should be launched against Shri Teli, Shri Rajput and Shri Bhabal and the matter may be left for the decision of the Court on merits.

The Civil Supplies Department has forwarded these papers to the R.L.A. for a dvice whether as proposed by the District Superintendent of Police, Ratnagiri these three persons can be prosecuted successfully on the available evidence.

It can be established that 10 bags of rice (superior quality) which were issued from the Deogad Godown for the Telebazar Retail Distribution Centre have not been credited in the Retail Distribution Centre's account and the amount of Rs. 357-4-9^{paid} for purchasing the bags is also not debited in the Retail Distribution Centre's accounts. The office copy of the authorisation is removed by somebody from the records but from the duplicate which was with the godown it is clear that the bags were received by Shri Bhabal who was a motor driver in the employment of Shri Teli- the Chairman of the shop. The evidence recorded in this case shows that the work of the shop was done mostly by Shri Teli the Chairman and Shri Rajput the salesman and generally they used to go to the get the grainbags. Only sometimes Shri Achrekar a member of the shop (which was a Co-operative Society) and Shri Rane used to go. The indent in pursuance of which the authorisation was prepared was signed by Shri Teli and although there are alterations and erasures, this indent could not have passed in any another hands except those of Shri Teli, Shri Rajput and Shri Bhabal. Authorisation No. 59379 in respect of 10 bags of rice was on Deogad godown and the bags were received by Shri Bhabal. The authorisation No. 59380 for the grains viz. 5 bags of jada rice and 50 bags of wheat which were also included in the indent, was it is stated received by Shri Rajput. Shrimati Bhide (Dixit) has stated that these two authorisations are not in her handwriting and

that Shri Rajput used to write authorisations whenever she was busy with other work. It therefore appears that these authorisations must have been written by Shri Rajput. But the report of the Assistant Handwriting expert is not helpful. He has said that he is unable to express any opinion as the specimen offered inadequate data for comparison. It appears from the panchamas in connection with the handwriting that handwritings of about 21 persons were sent for comparison with the writing on authorisations and other relevant documents. In view of this perhaps, the Assistant Handwriting Expert must have found difficulty in indentifying the handwriting. It would be better if only the panchnama of the handwriting of Shri Rajput is asked to be compared with the writing on authorisation No. 59379 and 59380 and the Handwriting Expert himself is requested to give his opinion in the matter. If any definite opinion in this respect is received that would strengthen our case against Shri Rajput.

On the available evidence, Shri Bhabal can be prosecuted as he has received the bags which are not credited in the shop account. He does not remember to whom he delivered the bags but stated that they may have been kept in Shri Shirsati's godown. The other members of the shop stated that such was never the practice. Shri Teli is the Chairman the indent was in his handwriting and as he was looking after the shop he should have been that the bags were credited in the shop account. It has been detected that some other 12 bags of rice which were received by the shop were sold in one day. In a village this seems quite impossible and the affairs of the shop seem fishy. Shri Rajput was the salesman and was looking after the accounts. He used to go frequently for grain purchases; he was known in the supply accounts office, he used to write even authorisations and in this case part of the grain mentioned in the indent is received by him from the other godown. He should also be prosecuted.

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These result of the prosecution would depend upon the appreciation of evidence by the Court and the depositions of the witnesses and it is not possible to state definitely at this stage that it would succeed. However, as there is a prima facie case against the three persons prosecution may be launched after obtaining Handwriting Experts opinion again.

Sd/ P.M. JAD.
24/10

Remembrancer of Legal Affairs.

U.R. to C.S.D. NO. G- 662 dated the 26th October 1953.

VGP. 16-8-56.

Clause 14 of the Bombay Rationing Order, 1943 provides that every ration document issued under that order is the property of Government but the person to whom it is issued is entitled to its custody and shall be responsible for its safe custody. The ration card would be "property" within the meaning of that term as used in the Indian Penal Code in the Chapter relating to offences against property viz. Chapter XVII (Please see para 3, R.L.A.'s opinion No. 544-Conf., dated the 8th October 1948 wherein essentiality certificate was held to be property). If a ration card is merely lost, there would not be any alibi liability on the person to whom it is issued to give intimation to the Rationing Authorities in the absence of express provision to that effect either in the Bombay Rationing Order or under any regulations issued thereunder, nor can such a person be considered as guilty of having failed to discharge his obligation regarding his responsibility of the safe custody of the ration card. However, if the holder of a ration card wilfully destroys it, for instance, by tearing the card then it can be said that he had caused wrongful loss or damage to the public and he can be prosecuted for mischief under section 426 of the Indian Penal Code. In the case of Sukha Singh Vs. Emperor, reported in Criminal Law Journal Vol.II, 1905 at p. 242, the accused tore a postal receipt and threw it on the ground which he was asked to sign an acknowledgment of the articles received by him from a village branch post-master and it was held that he was guilty of mischief. Chatterji J. who decided that appeal stated that - "the act of tearing is an act of mischief and the postal receipt is the property of post office which has some value however small. The tearing of such receipt caused damage to the post office i.e. wrongful loss to it and there can be no question that the accused is liable under section 426 for his act". - From this case, it is clear that tearing of a ration card wilfully will be punishable as mischief. However in that case of Sukha Singh, Chatterji J. remarked that the

case was of little importance in itself and the appeal was entertained as the Government Advocate assured the Court that the appeal was filed simply with the object of making it clear to village people at large in the Punjab that they could not with impunity tear a postal receipt after receiving delivery of the article for which it is to be given and to help village post masters to do their duties efficiently among a rude and ignorant population. He also remarked that a severe punishment was not called for and the accused was sentenced to a fine of Rs.2/- only. From these observations it is clear that the offence of mischief in respect of tearing of ration card also is likely to be considered by the Court to be too trivial to be taken notice of (Cf. section 95 Indian Penal Code).

Sd/P.M.LAD.
15/12

Remembrancer of Legal Affairs.

U.R. to C. of R. NO. G- 777, dated the 16th December
1953.

VGP. 16-8-56.